IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Crl.MC.No. 2424 of 2007()

O.S.No.654/2006 of MUNSIFF COURT, KAYAMKULAM

PETITIONER:

E.SALIM, AGED 50 YEARS,
S/O.ISMAIL, VELIYIL VETTIL,
RESIDING AT PALLIYUDE PADINJARE PANDAKASALAYIL,
ERUVA MURI, PATHIYOOR VILLAGE.

BY ADV. SRI.R.REJI

RESPONDENTS:
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1. THE R.D.O., CHENGANNUR.

2. JALALUDEEN,
THARAYIL PUTHENVEETTIL, ERUVA MURI,
PATHIYOOR VILLAGE.

3. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
SRI.S.HARIKRISHNAN FOR R2

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2424 of 2007

Dated this the 27th day of September 2007

O R D E R

Against the petitioner, a conditional order under Section 133 Cr.P.C has been passed by the Sub Divisional Magistrate. The grievance of the petitioner is that proceedings under Section 133 Cr.P.C should not have been initiated against him inasmuch as there is no public right involved at all. The dispute is purely a private dispute between the contestants, it is urged.

2. The law on the point is very clear. When a conditional order is passed against the petitioner, the petitioner has to appear before the learned Sub Divisional Magistrate. He must be questioned under Section 137(1). If he denies the existence of public right, then enquiry under Section 137(2) has to be conducted. An order under Section 137(2) Cr.P.C has to be passed. Thereafter, if necessary, enquiry under Section 138 Cr.P.C must be conducted. Subsequently orders under Section 138 Cr.P.C must be passed.

3. The report of the Sub Divisional Magistrate was called for. The Sub Divisional Magistrate has stated in his report that the matter stood posted to 22/8/2007 and the needful shall be done in accordance with the Code of Criminal Procedure.

4. It is for the petitioner to take part in the enquiry to be conducted under Section 137(2) Cr.P.C. The Sub Divisional

Magistrate, needless to say, must pass appropriate order under Section 137(2) Cr.P.C in accordance with law and thereafter, if necessary, only proceed to the next stage of enquiry under Section 138 Cr.P.C. It is submitted that order under Section 137 (2) Cr.P.C has not been passed so far.

5. I am satisfied, in these circumstances, that I need only direct the Sub Divisional Magistrate to complete the enquiry under Section 137(1) Cr.P.C as expeditiously as possible and pass appropriate orders under Section 137(2) Cr.P.C. Needless to say, if the order is against the petitioner, his right to take appropriate further steps shall remain.

6. With the above observations, this Criminal Miscellaneous Case is dismissed. I make it clear that I expect the Sub Divisional Magistrate to pass appropriate orders under Section 137(2) Cr.P.C as expeditiously as possible, at any rate, within a period of two months from the date on which a copy of this order is placed before the Sub Divisional Magistrate.

7. Hand over copy of this order to the learned counsel for the petitioner for immediate production before the Sub Divisional Magistrate.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007